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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,487	08/04/2006	Guido Schmitz	293369US0PCT	6702

22850 7590 11/22/2011  
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1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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JACOBSON, MICHELE LYNN

ART UNIT	PAPER NUMBER
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1782

NOTIFICATION DATE	DELIVERY MODE
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11/22/2011

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# RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex Parte* GUIDO SCHMITZ, HARALD HAGER, and HANS RIES

Appeal 2011-000663  
Application 10/588,487  
Technology Center 1700

Oral Hearing Held: October 13, 2011

Before TERRY J. OWENS, JEFFREY T. SMITH, and MARK NAGUMO,  
*Administrative Patent Judges.*

APPEARANCES:

ON BEHALF OF THE APPELLANT:

JAY E. ROWE, JR., ESQUIRE  
Oblon, Spivak, McClelland, Maier & Neustadt, L.L.P.  
1940 Duke Street  
Alexandria, Virginia 22314

The above-entitled matter came on for hearing on Thursday, October 13, 2011, commencing at 10:30 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Timothy J. Atkinson, Jr., a Notary Public.

P R O C E E D I N G S

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THE USHER: Calendar No. 8, Appeal No. 2011-000663,

3

Mr. Rowe.

4

JUDGE OWENS: Thank you.

5

MR. ROWE: I think my glasses were left here. Yeah. Good  
6 morning.

7

JUDGE OWENS: Good morning.

8

JUDGE SMITH: Good morning.

9

MR. ROWE: These are the references that we need.

10

THE REPORTER: Okay. Thank you very much.

11

MR. ROWE: Okay. May it please the Board, my name is Jay Rowe  
12 and I'm representing the Appellants in this case. And what we're dealing  
13 with in this invention is a method for etching semi-conductor-type wafers  
14 wherein in the normal method of processing, a wafer is coated with a mask.

15

JUDGE SMITH: Excuse me, Counselor?

16

MR. ROWE: I'm sorry?

17

JUDGE SMITH: Can you give us the Appeal Number that you're  
18 discussing?

19

MR. ROWE: Yes, I apologize. This is 673.

20

JUDGE SMITH: Okay.

21

MR. ROWE: Is that --

22

JUDGE OWENS: We can do that. The first one on the list is the  
23 other one.

24

JUDGE NAGUMO: It was 663, but --

25

MR. ROWE: Well, we can do that one.

26

JUDGE SMITH: No, that --

1 MR. ROWE: Let's stay in order. Sorry. Well, then I'm still me and  
2 I'm still representing the Appellants, and in this case we're dealing with a  
3 multi-layer laminate where we, in fact, are bonding an ethylene vinyl alcohol  
4 layer with a perfluoropolymer layer. And we're dealing with an obviousness  
5 rejection where the Examiner has taken three references.

6 We have Schmitz, Böer, and Jadamus. And basically, Schmitz  
7 describes a polyamide ethylene vinyl alcohol combination. Jadamus  
8 describes a perfluoropolymer or polyethylene combination. And no one of  
9 the three references describes a specific laminate containing ethylene vinyl  
10 alcohol laminated to a perfluoropolymer or a polyethylene polyolefin-type  
11 composition.

12 So the gist of the Examiner's rejection for obviousness is based on  
13 description in the Böer reference, wherein she cites in column 2, beginning  
14 at line 7, and I'll just quote this. This is in the Appeal Brief. It's in the Reply  
15 Brief. But I think this is very, very important where Böer says, "A typical  
16 approach to bonding, for example, polyester and polyamide layers would be  
17 to use an adhesion promoter consisting of a mixture of polyamide and  
18 polyester."

19 So just keep in mind that the combination that this reference is  
20 specifically directed to is polyamide laminate to polyester, and this is where  
21 the Examiner stops in her citing. She appears to ignore the next paragraphs  
22 which go on to say that in this particular case just a simple mixture of the  
23 two materials is not effective. And the reference goes on to describe, you  
24 have a brittle combination. And as a result of this and the various problems  
25 that are associated with it, and I go down now to line 26, "However, the  
26

1 preparation of the polyamide-polyester block copolymer of this type is not  
2 easy and requires the addition of auxiliaries or catalysts."

3       So what the reference has gone to is, look, if you can't mix the two  
4 easily, what you need to do is to form some sort of a block copolymer  
5 combination in order to overcome the problems that are associated with the  
6 direct mixture. And it says "This is a difficult thing to do." And he goes  
7 down in line 31, "Precise control of the end groups is necessary in order to  
8 ensure that the appropriate end groups are present in sufficient  
9 concentration." And then, in line 36, "The production of adhesion promoters  
10 of this type therefore requires considerable effort." And then --

11       JUDGE OWENS: Suppose all that teaching weren't there, do you  
12 think the Examiner would have a prima facie case of obviousness?

13       MR. ROWE: No, because the reference is directed specifically to a  
14 polyester-polyamide combination, and there is no indication whatsoever in  
15 that reference that would say that which the Examiner citing the reference  
16 teaches is actually taught. And I would point out to you that the reference is  
17 teaching that in order to laminate a polyester to a polyamide the intermediate  
18 laminate layer would contain both polyester and polyamide. And what the  
19 Examiner is simply using this -- remember, the invention is directed to  
20 perfluoropolymer or polyolefin laminated to an ethylene vinyl alcohol. And  
21 so, if you were to follow the reasoning that the Examiner cites in this  
22 reference, your intermediate layer would, therefore, be a mixture of ethylene  
23 vinyl alcohol, and either the perfluoropolymer or the polyolefin, which is not  
24 the case.

25       And then, the very last paragraph before the summary, "Composites  
26 comprising other materials are also known. But due to the above-mentioned

1 incompatibility of most polymer materials, similar types of individually-  
2 matched adhesion promoters are usually required. And those individually-  
3 matched adhesion promoters come about due to a great deal of effort, which  
4 requires a great deal of experimentation."

5       This reference does not enable one to make any such type of  
6 composite material. It really invites experimentation, and I don't believe the  
7 invitation to experiment can be the basis of a support for an obviousness  
8 rejection. So on that fact, alone, I believe this rejection should be reversed.

9       JUDGE SMITH: I have no questions.

10       JUDGE OWENS: Do you have any questions, Mark?

11       JUDGE NAGUMO: No.

12       MR. ROWE: And that's --

13       JUDGE OWENS: No more questions.

14       MR. ROWE: Okay.

15       (Whereupon, the proceedings, at 10:40 a.m., were concluded.)  
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